IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

WP(C).No. 35684 of 2007(W)

AGAINST THE ORDER DATED 19/09/2007 IN IN IA.6185/2007 IN OS.518/2005 of II ADDL.M.C., ERNAKULAM
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PETITIONER: PLAINTIFF:

ANTONY JOSEPH S/O. K.A.JOSEPH
C.C.NO. DOOR NO.34/1027, A KATTIKKATT BEENA
ANJUMANA ROAD EDAPALLY P.O. KOCHI-24,
REP. BY POWER HOLDER K.A. JOSEPH,
S/O. ANTONY CONTRACTOR C.C.NO. DOOR NO.34/1027,
A KATTIKKATT BEENA ANJUMANA ROAD EDAPALLY P.O.,
KOCHI-24.

BY ADV. SRI.K.V.JAYACHANDRAN

RESPONDENT: DEFENDANT:

K.A.JACOB @ CHACKO,S/O. ANTONY, TAILORING
BUSINESS, KATTIKKATT HOUSE, NEAR VARUNA
NAVY FLATS, CHILAVANNOR, KADAVANTHARA.P.O.,
ERNAKULAM KOCHI-20.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 35684 OF 2007

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Dated this the 3rd day of December, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the order in I.A.6185/07 in O.S.518/05. The said application is for issuance of a Commission and the prayer in the Commission application is to appoint an Advocate Commissioner to measure and fix the common boundary of the plaint schedule property.

2. The contention of the party herein is that there was an oral partition whereby the property now claimed by the party has come to absolute possession and right and therefore a boundary is to be fixed. The other side would contend denying the oral partition. So unless and until the question of an oral partition is decided, the question of fixing boundaries may not strictly arise. Therefore I do not find any fault with the finding of the learned Munsiff for dismissing this application at this stage. But I make it clear

that the writ petitioner is at liberty to move the Court to gather materials which may be of help to decide the question of oral partition by filing a fresh Commission application which the Court can allow. Secondly, after adducing evidence, the Court is satisfied about the oral partition, then naturally in order to give an ultimate decree the Court may have to again appoint a Commissioner for fixing of boundary in accordance with the rights of parties in the properties.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-